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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,999	08/22/2003	Steven Ausnit	769-222 Div. 7	1117

7590 11/04/2004

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EXAMINER	
SIPOS, JOHN	

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,999	AUSNIT, STEVEN	
	Examiner	Art Unit	
	John Sipos	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *40 and 41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *40 and 41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DOUBLE PATENTING

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Claims 40 and 41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over US Patent Nos. 6,694,704, claim 1. Although the conflicting claims are not identical, they are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims to be obvious variants of the claim of the patent. Claim 1 of the patent and the claims of the present application are directed to method of attaching a fastener proximate a cutout in a film. While the claims of the present application and the claims of the patents may vary in scope and terminology, the additional limitations and differences of the patented claim would have been obvious eliminations to one having ordinary skill in the art.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 40 and 41 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Cantor (3,936,923). The patent to Cantor shows the positioning of a fastener with two strips 20,22 and a slider 154 covering an opening 30 in a material and sealing the fastener in place. Although the step of moving the material is not shown in Cantor, it would have been obvious to one skilled in the art to move the material in a direction crosswise to the length of the fastener. Similarly, the separating of the simultaneous sealing step of the two fastener strips into separate steps would have been obvious to one skilled in the art.

The statement of intended use in the preamble of the claim is not afforded the effect of a distinguishing limitation unless the body of the claim refers back to, is defined by, or otherwise draws life and breadth from the preamble. Note that the forming of the bag is not claimed.

Claims 40 and 41 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Bois (5,816,018 – previously cited) in view of Bahr (4,335,817 – previously cited) or alternatively Bahr in view of Bois. The patent to Bois shows the moving of a film F, providing a fastener P comprising of two strips and the attaching at 120 the fastener crosswise to the film. The patent to Bahr shows the forming of a bag by attaching a fastener 14 with a slider 48 at 50,52 over a cutout 36 in a film to permit access to the contents through the side rather than through the top of the bag.

The Bois operation lacks the use of a fastener with a slider; and with respect to claim 41, it lacks the use of a cut out in the film while the Bahr reference lacks the showing of moving a film and cross sealing the fastener to the film.

With respect to claim 40, it would have been obvious to one skilled in the art to provide the fastener of Bois with a slider as shown by Bahr to aid the opening of the bag. With respect to claim 41, it would have been obvious to one skilled in the art to provide the film of Bois with a cutout as shown by Bahr to permit access to the contents through the side rather than through the top of the bag.

Alternatively, it would have been obvious to one skilled in the art to attach the fastener of Bahr crosswise to the film prior to formation of the bag as taught by Bois to form side opening bags.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered but are not persuasive and are moot in view of the new rejection. The only argument applicant makes is that the Cantor reference seals the strips of the fastener simultaneously to the film rather than separate steps. It would have been obvious to one skilled in the art to separate such a sealing step into two independent steps for any reason be it the use of different sealing mechanisms, requirements of space, different sealing strengths or patterns, etc. Little novelty is seen without the recitation in the claims of the rest of the process that would require such separate sealing steps.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

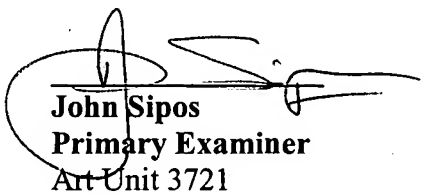
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882.** The examiner can normally be reached from 6:30 AM to 5:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos
Primary Examiner
Art Unit 3721